

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

BELINDA VIGIL, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:15-cv-13643

COLOPLAST CORP.,

Defendant.

MEMORANDUM OPINION AND ORDER

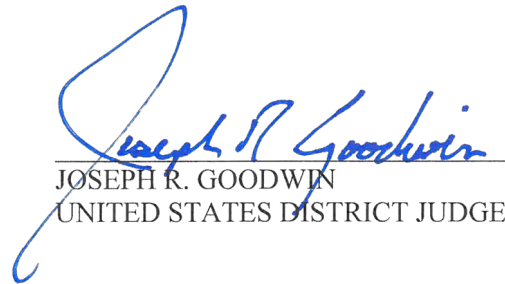
Pending is Defendant Coloplast Corp.’s Motion for Partial Summary Judgment, filed May 13, 2019. [ECF No. 41]. In the motion, Coloplast Corp. (“Coloplast”) moves for partial summary judgment as to the following Counts: I, II, III, IV, VI, VII, VIII, IX, XI, XIII, XIV and XVII. Plaintiffs respond in part, by stating that they will not proceed on and ask the court to deny Coloplast’s Motion as to the following Counts: Count I (negligence in manufacturing *only*), II (strict liability - design defect), III (strict liability - manufacturing defect), VI (breach of express warranty), VII (breach of implied warranty), VIII (fraudulent concealment), IX (constrictive fraud), XI (negligent misrepresentation), XIII, (violation of consumer protection laws), and XIV (gross negligence). [ECF No. 50]. Coloplast has replied [ECF No. 53].

Plaintiffs might well have moved to dismiss these claims if they do not intend to pursue them. In any event, summary judgment is appropriate on all claims where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Because plaintiffs have acknowledged they do not intend to pursue the claims cited above, the court **ORDERS** that Coloplast’s Motion for Summary Judgment [ECF No. 41] is **GRANTED as to Counts I**

(negligence in manufacturing *only*), II (strict liability - design defect), III (strict liability - manufacturing defect), VI (breach of express warranty), VII (breach of implied warranty), VIII (fraudulent concealment), IX (constrictive fraud), XI (negligent misrepresentation), XIII, (violation of consumer protection laws), and XIV (gross negligence), and is otherwise **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record.

ENTER: September 12, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE